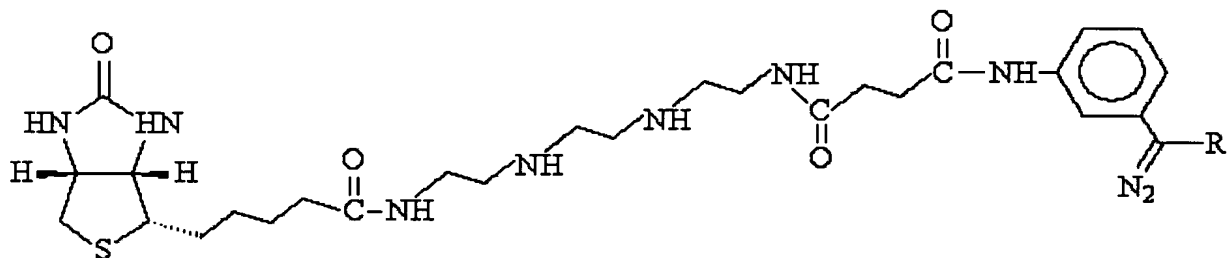


## REMARKS

Claims 26–66 are pending in this application. By this Amendment, claims 1–25 are canceled and claims 26–66 are added. Support for newly presented claims 26–66 may be found, for example, in the claims as originally filed. No new subject matter is added. Prompt and favorable consideration on the merits is respectfully requested.

In reply to the April 29, 2008 Restriction and Election of Species Requirement, Applicants provisionally elect Group I, a labeling reagent (claims 26-37), with traverse. As a species, Applicants provisionally elect Formula (13):



wherein R<sup>1</sup> is biotin, with traverse. At least claims 26–31 read on the elected species. At least claim 26 is generic.

PCT Rule 13.2 states:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

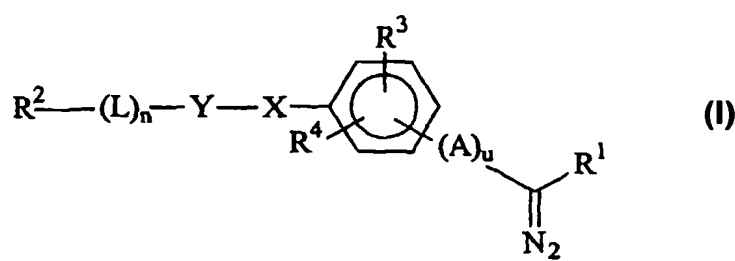
A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after taking the prior art into consideration. See MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of

invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

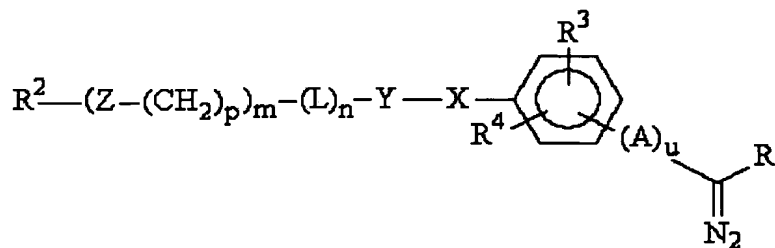
The Office Action asserts that the technical feature linking the subject matter of Group I–IV is either a phenyl ring or C=N, because all other structural features are variables, asserting that variables do not constitute a linking technical feature. Applicants respectfully disagree with this assertion, as it has no basis in fact or law. Every feature that carries patentable weight that is common among two or more claims is a linking technical feature.

The Office action asserts that the core structure is taught in WO 02/090319.

However, the "core structure" taught in the abstract of WO 02/090319 is:



but claim 26 recites the following formula:



Clearly, the formula of WO 02/090319 does not include the  $-(\text{Z}-(\text{CH}_2)_p)_m-$  group required by claim 26.

In distinguishing the presently claimed molecules over those disclosed in WO 02/090319, the present specification indicates that:

...the use of polyaminated arms...make it possible to distance the biotin from the reactive center (diazo function). Thus, a

better solubility in aqueous medium is obtained through the introduction of the hydrophilic arm, with the possibility of protonation of the amines in an aqueous medium at neutral pH, which produces an attraction between the nucleic acids, which are negatively charged, and the label, with two main consequences:

- more rapid labeling, which may be particularly advantageous for samples at low concentration, and
- stabilization of the double helix by neutralization of the negative charges of the phosphates.

See specification at page 3, line 23 to page 4, line 4.

WO 02/090319 obviously does not teach this feature. As such, the Office Action fails to establish that there exists a lack of unity of invention between Groups I-IV. For at least this same reason, the Office Action fails to establish that there exists a lack of unity of invention between the species. As such, the restriction requirement and the election of species requirement are improper. Reconsideration and withdrawal of the requirements are respectfully requested.

Respectfully submitted,



William P. Berridge  
Registration No. 30,024

Jeffrey R. Bousquet  
Registration No. 57,771

WPB:JRB

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**OLIFF & BERRIDGE, PLC**  
**P.O. Box 320850**  
**Alexandria, Virginia 22320-4850**  
**Telephone: (703) 836-6400**

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